

In the United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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IN THE MATTER OF

AMERICAN MARINE PRODUCTS COMPANY,  
a corporation,

*Debtor,*

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GLOBE GRAIN AND MILLING COMPANY, INDUS-  
TRIAL OIL PRODUCTS CORPORATION,  
AND MURRAY OIL PRODUCTS COMPANY,  
*Appellants,*

*vs.*

AMERICAN MARINE PRODUCTS COMPANY, a cor-  
poration,

*Appellee.*

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APPELLEE'S REPLY BRIEF.

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APPELLEE'S REPLY BRIEF.

ARGUMENT.

I.

The Appellants Are Not Entitled to Intervene Under the Provisions of Section 77B of the Bankruptcy Act.

The appellants seek to intervene in a proceeding instituted by the appellee under the provisions of Section 77B of the Bankruptcy Act. At the time of filing its

petition, the appellee was engaged in the business of manufacturing fish oil and fish meal. It had entered into executory contracts with divers persons for the sale of its products. (R. p. 6) The appellants were among those with whom such executory contracts had been made. (R. pp. 27, 28 and 33) Copies of the contracts made with the appellants will be found at R. pp. 35, 37, 39, 42 and 44. It is not clear upon what authority the appellants base their contention that they have a right to intervene in the proceeding. They held executory contracts for the purchase of products of the debtor. There is no allegation, nor is there any contention, that they were creditors or stockholders of the Company. The provision of Section 77B relative to intervention is found in Subdivision (c) (11) of that Section (48 Stat. 917, 11 U. S. C. A. Sec. 207 (c) (11)), the pertinent part of which reads as follows:

“\* \* \* Any creditor or stockholder shall have the right to be heard on the question of the permanent appointment of any trustee or trustees, and on the proposed confirmation of any reorganization plan, and upon the filing of a petition for leave to intervene, on such other questions arising in the proceeding as the judge shall determine.  
\* \* \*”

It is submitted that the appellants are neither creditors nor stockholders and do not come within the classes entitled to intervene in the proceeding. *Gerdes on Corporate Reorganizations* speaking of intervention says at Sec. 792:

“The language of subdivision (c) (11) of Section 77B seems to indicate that it is intended that

permission to intervene generally should rarely be granted. The statute states that stockholders and creditors shall have the right to be heard 'on such other questions arising in the proceeding as the judge shall determine'. Express mention of general intervention is not made. The judge may, in his discretion, decide that certain creditors or stockholders should be heard on all questions arising in the proceedings and may grant them leave to intervene generally, but he should be chary about giving such permission."

## II.

### **Whether Intervention Is to Be Permitted, Even in the Case of Creditors and Stockholders, Is Within the Discretion of the Judge.**

*Gerdes on Corporate Reorganizations* says, Sec. 791:

"\* \* \* creditors and stockholders of a debtor corporation are given the right under Section 77B to file petitions for leave to intervene in the proceedings to protect their interests. Whether such leave should be granted, and to what extent it should be granted, is left to the discretion of the judge."

In *General Theatres Equipment* 12 F. Supp. 785 (Del. 1935) the Court said:

"Leave to intervene is wholly discretionary with the Court."

The appellants have not pointed out that there was any abuse of discretion on the part of the Court in refusing to permit intervention by the appellants. The ap-

pellee contends that the order of intervention was properly refused. The orderly administration of the proceedings would be obstructed if every person so minded were permitted to intervene. *Gerdes on Corporate Reorganizations* comments as follows: (Sec. 793):

“General intervention involves the adding of a new party to the proceedings with an independent attorney. If one creditor is permitted to intervene, there is no reason why others similarly situated should not be accorded the same privilege. The orderly conduct of the proceedings is obstructed by the addition of a large number of parties to whom it is necessary to give formal notice of each step in the proceedings, and the expenses of administration are unnecessarily increased when allowances are made to attorneys for many separate creditors.”

The petition of the appellants Globe Grain and Milling Company and Industrial Oil Products Corporation presents exactly the objections to intervene above mentioned. In paragraphs IX and X of the Petition to Intervene (R. p. 30) the appellants state that it is their desire that “their counsel be fully advised in all proceedings herein; that they be represented by counsel at all proceedings herein”, and that “the petition is filed not only on behalf of the appellants but all other persons having unfilled contracts who may care to join in.” Thus the appellants seek a general intervention, which if permitted would saddle a very heavy and onerous burden upon all parties to the proceeding, in that they would be

obliged to give notice to appellants of every step taken regardless of the fact that such step might in no manner affect any interest of the appellants.

The appellee contends that a proceeding under Section 77B "is not like an omnibus into which anyone may get as it goes along."

It is respectfully submitted that the refusal of the Lower Court to permit the appellants to intervene was proper because (1) the appellants failed to establish facts entitling them to intervene and (2) the refusal was within the discretion of the Court, and there is no showing that there was an abuse of discretion.

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